IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO. 1998 OF 1990

1. Shri.Bhagwan Sudam Borhade
2. Shri.Parameshwar Sudam Borhade
All residents of Shinoli Tal.Ambegaon, Dist.Pune ..Petitioners (Applicants)

Versus

1. The State of Maharashtra
2. Shri.Pandurang Mahadeo Rajguru, Mohan nagar, 'A' Bldg. 4th floor, Dhanukar Wadi Dattamandir Road, Kandivali (W) Mumbai-400066 Amendment carried out vide Addl.Registrar's order dated 19.8.1999 passedin C.A.No.5719 of 1999
3. Shri.Kisan Maruti Borhade sincedeceased through his heirs:
3a. Laxmibai Dhondibhau Vaiyal At and Post Aavasari Khurd, Tal. Ambegaon, Dist.Pune.
3b. Kalpana Bhalchandra Bhalerao At and Post Kalamb, Tal. Ambegaon Dist.Pune.
3c. Bhagubai Kisan Borade r/o at post Avasari Kd. Tal.Ambegaon,Dist.Pune.
3d. Asha Ramdas More r/o Mukan Bhavadi, Post Koregaon, Tal. Ambegaon, Dist.Pune. ..Respondents

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Mr.Prafulla B.Shah for Petitioners
Mr.A.H.Palekar AGP for Respondent No.1
None for Respondent no.2 though served
Mr.Thakur for heirs of respondent no.3 (absent)

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CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 29,2005

ORAL JUDGMENT:

1. The petitioners had purchased agricultural land located and to the extent as mentioned below from respondent no.2.

Name of Village	Gat No.	Area
Shinoli	508	0.9 Are
	519	0.82 Are

2. However, the respondent no.2 came in possession of the said land from respondent no.3 by way of registered sale deed dated 13.1.1981. Within few months, the respondent no.3 filed an application dated 14.12.1981 with the Agricultural Land Tribunal (ALT) complaining that the respondent no.2 was neither an agriculturist nor an agricultural labour and therefore, the land could not have been sold unless prior permission from the Collector was obtained as per Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Act' for short). He sought the declaration and also the possession of the land from respondent no.2. The ALT ordered an enquiry by issuing notices to all the concerned. The

petitioners also appeared before the ALT. It was pointed out that the petitioners were the agriculturists and they were eligible to purchase agricultural land without seeking prior permission from the Collector. The respondent no.2 had sold the land in Gat No. 508 to the petitioner no.1 on 28.1.1982 and the land in Gat No. 519 was sold by respondent no.2 to petitioner no.2 on the same day. During the enquiry, it was revealed that the respondent no.2 could not purchase the land unless prior permission from the Collector was obtained as he was neither an agriculturist nor an agricultural labour. The ALT therefore, by its order dated 29.9.1984 held the transaction between the respondent no.3 and 20 illegal and consequently, the sale of land by respondent no.2 to the present petitioners was also held to be illegal.

4. The petitioners therefore, went in appeal before the Sub-Divisional Officer and it came to be registered as Appeal No. 39 of 1984. By his judgment and order dated 17.9.1985, the Sub-Divisional Officer was pleased to dismiss the appeal after hearing the parties concerned. The petitioners carried the order passed by the Sub-Divisional Officer in Revision before the M.R.T. and the Revision was also dismissed by judgment and order dated 26.7.1988. The petitioners filed a

Review Application before the M.R.T. and the same was also dismissed on 29.8.1989.

5. The Sub-Divisional Officer as well as the M.R.T. had called for the record in respect of the suit land and on perusal of the evidence oral and documentary, both the authorities below noted that respondent no.2 was not an agriculturist and he was not an agricultural labour as well. He could not have purchased the suit land unless prior permission from the Collector was obtained as required under Section 63 of the Act and failure to do so, rendered the sale transaction of respondent no.3 to respondent no.2 as illegal and void ab-initio. Consequently, respondent no.2 did not have a legal right to the suit land so as to sale the same inturn to the present petitioners and therefore, consequently, their transaction was also held to be illegal and invalid. The findings recorded by all the three authorities below are findings of facts so as to examine and determine the status of respondent no.2 as being not an agriculturist so as to come within the purview of Section 63 of the Act. These findings are based on appreciation of evidence and therefore, these concurrent findings cannot be termed as perverse or grossly erroneous warranting interference under Article 227 of the Constitution of India.

6. However, Mr.Shah, the learned counsel for the petitioners pointed out that based on the decision of this Court in the case of *Shobhechi Daru Utpadan Kharedi Vikri Sangh Vs. State of Maharashtra and another [1997 (3) Mh.L.J. 215],* the petitioners have submitted an application to the Collector Pune for seeking permission under Section 63 of the Act, post facto. Mr.Shah prayed for directions to the Collector to decide the said application within a fixed period. He further submitted that the petitioners are in possession of the subject land as at present on account of the interim relief ordered by this Court on 29.10.1990.

7. In the premises, this petition fails and the same is hereby dismissed. However, the Collector Pune is directed to decide the pending application submitted on merits and as expeditiously as possible but in any case within a period of three months from the date of the receipt of the writ. The interim order passed by this Court on 29.10.1990 shall be operative till the pending application is decided by the Collector.

8. Rule discharged with no order as to costs.

9. Writ to go forthwith to the Collector, Pune.

[B.H.MARLAPALLE,J.]